

**CHESAPEAKE BAY LOCAL ASSISTANCE BOARD'S
POLICY COMMITTEE MEETING - JULY 16, 2003
JAMES MONROE BLDG.
101 N. 14TH STREET, 17TH FLOOR CONFERENCE ROOM
RICHMOND, VIRGINIA 23219
MINUTES**

MEMBERS PRESENT:

Donald W. Davis
William D. Cowling
Robert Mendelsohn

STAFF PRESENT:

Scott Crafton, Executive Director
Bernie Harold, Chief of Engineering

duct that would be helpful not only to the Department but to local governments. He expressed an interest in hearing any comments that would be offered.

Mr. Baxter went on to note that if other issues came up in the future that the Secretary's Office was more than willing to provide assistance as was done in this instance. He again thanked staff, the members of the Ad Hoc Committee who were present and Mr. Crafton.

Mr. Davis recognized Ms. Catherine Harold to provide information about the committee consensus on Water Bodies with Perennial Flow, mapping requirements and definitions.

Ms. Harold provided a brief reference to the Regulations prior to March 1, 2000 which had language indicating that RPAs were areas that needed protection at or near the shoreline.

vs, are a part of the perennial stream. Generally, the water table is located above the channel bed for most of the year and groundwater is the primary source for stream flow.

Ms. Harold explained that the Committee agreed that a stream channel is likely perennial when any of the following criteria are met. (1) biological Indicators are present, such as fish, crayfish, amphibians, mussels/clams, large multi-year tadpoles or other macroinvertebrates, that require water for entire life cycles.

These organisms include, but are not limited to Ephemeroptera (mayflies), Plecoptera (stoneflies) or Trichoptera (caddisflies).

Ms. Harold provided the following list of methods for determining perennial flow: (1) field indicator protocols; (2) ground water monitoring; (3) surface water monitoring; (4) drainage area based sampling; and (5) documented observation.

Ms. Harold briefly explained that the field indicator protocols involve evaluating

ly and will provide useful information even though some perennial streams may be
sed.

There was discussion about a recent pilot study in Fairfax County, and Mr. David asked if Ms. Harold remembered the approximate percentage of land that had been added to the Resource Protected Area.

Ms. Salvati responded that she seemed to remember 30% of the streams became perennial.

Mr. Mendeolsohn commented that it wasn't quite doubling the total but it was a significant increase. He also said that the County is in the process of actively mapping every stream.

Ms. Harold continued her discussion about documented observations using the documentation that would be appropriate under some circumstances. She said that

Ms. Harold said that the guidance makes reference to the section of the regulations pertaining to mapping and the Plan of Development Review process, where a locality is required to show whether water bodies do have perennial flow and they are required to make the necessary adjustments to the RPA boundaries. She noted that all provisions of the Chesapeake Bay Preservation Act apply to all of the newly established RPA areas.

She went on to note that localities are required to delineate RPA/RMA boundaries on plats and site plans. A notation needs to be made on plats that have RPAs, requiring the creation of an undisturbed and vegetated 100 foot buffer. The buildable area should be identified on site plans for each lot during the plan of development review process based on performance criteria and setback requirements. Ms. Harold advised that there is no guidance on grandfathering of previously platted or developed properties that fall within the newly-designated RPAs. These are afforded administrative relief under Nonconforming Uses and Structure Guidance.

Mr. Baxter stated that this issue would definitely be taken into consideration. Mendelsohn asked if the issue had been reviewed. Mr. Baxter stated that it had not been discussed. Mr. Crafton said that at the very least this should be reviewed, and Mr. Davied, pointing out that the way it was written could be interpreted that there should be buffers around all ditches. Mr. Mendelsohn expressed concern about being able to accomplish stream restoration.

Mr. Cowling added his concerns as the guidance related to the farming community. His concerns were directed at ditches and the appearance that the guidance would require a 100 foot buffer around them. Mr. Cowling explained how farmers manage their property, what could be expected from the soils and the ground water table on the Eastern Shore, and how inappropriate it is to have guidance that would force farmers to maintain a 100 foot buffer on their property around ditches. Mr. Cowling added a sentence in the Regulations where it is indicated that vegetation in the 100-foot buffer must be preserved if present and re-established where it does not exist. He went

whole purpose is supposed to be water quality protection. He said one way to ensure the protocols are amended appropriately would be that the proposed modifications go right to the Board and not to the Department. He directed everyone's attention to a comment on the first page, second paragraph that says the methods presented in the plan should reflect various options that are approved by the Chesapeake Bay Local Assistance Department. He suggested that there would be much more clout if the option was approved by the Board.

His final comment regarding the ditching issue, particularly in the Tidewater area, stated that a number of individuals are requesting continual help on the ditching issue. He said that local governments are using storm water ditches or agricultural ditches to control the way a development can be conducted regarding density and the location of lots, and there is a need to take another look.

Mr. Crafton asked if he understood correctly that localities are using the Bay Assistance Program specifically to do these things. Mr. O'Hare responded yes. Mr. O'Hare commented that

Mr. Davis asked Ms. Salvati what problems she thought a small locality would have that didn't have the expertise Chesterfield County had. Ms. Salvati responded that technical skill could be an issue and would hope that there would be a certification program. She said it does not need to be formal, but there is a need for training. She said Chesterfield has a list of qualified experts who do field determinations and delineate boundaries. She said that if she was a small locality, she would have a list of recognized, trained experts in stream methodology.

Mr. Baxter commented that Ms. Salvati's findings were one of the reasons that the method was not chosen for determining perenniality.

Mr. Davis recognized Ms. Claudia Cotton, representing the Tidewater Builders Association, and stated that she echoed Mr. O'Hare's comments. She said that she was deeply concerned about the ditches, because the truth was that creatures that inhabit perennial streams also inhabit roadside ditches.

Mr. Mendelsohn commented that he was concerned about there being significantly more land impacted and as importantly, the issue of property rights. He went on to suggest that the Board be sensitive to these issues.

Mr. Davis suggested that the Board consider keeping an Ad Hoc Committee together at all times. Mr. Crafton agreed and suggested an Ad Hoc Stakeholder Committee as well.

Mr. Cowling commented that he agreed with Mr. Mendelsohn and speaking of property rights, the 4th Amendment to the Constitution was always in the back of his mind. He said that it appeared that the Amendment was being pushed to the limit.

Mr. Davis recognized Mr. Darryl Cook, James City County, who also served on the committee. Mr. Cook commented that Mr. Baxter did a great job. He went on to say that his comments would be the same as those of Ms. Salvati. He shared that when his county adopted the North Carolina protocol the field determination threshold score was

Mr. Davis called for discussion on Draft Riparian Buffers Guidance Manual and recognized Mr. Scott Crafton for opening comments.

Mr. Crafton stated that the Buffer Manual issue had turned into an embarrassing situation. He said that the manual was presented to the Board under the assumption there was greater consensus and no significant issues. He said because of his work load he did not review it personally earlier and at the time it was presented to the Board there was not an opportunity to review it.

He said he has since reviewed the document and shares some of the same concerns that have been expressed by many commenters. He also learned that the local government advisory committee for this project apparently wanted the Department to produce a document that was strong. He pledged that the document would not say anything more than the Regulations.

Mr. Crafton went on to say that the plan is to revise the document and he has

Mr. Davis and Mr. Crafton discussed canceling the August 4th meeting of the Board and rescheduling a Policy Committee meeting for Tuesday, August 26, 2003 at 10:00 in the agency conference room. It was so decided.

Mr. Davis reminded everyone that the Northern and Southern Area Review Committees would meet on August 12, 2003 at their respective times. Mr. Davis suggested that new committee members would be assigned at that time.

Mr. Davis called for a motion to adjourn the meeting. Mr. Cowling motioned, Mendelsohn seconded. The meeting was adjourned at 12.20p.m.